

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LARRY JOHNSON,)	Case No.: 1:06 CV 1031
)	
Petitioner)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
REGINALD WILKINSON, Warden,)	
)	
Respondent)	<u>ORDER</u>

On April 26, 2006, Petitioner Larry Johnson (hereinafter, “Petitioner”) filed a Petition for Writ of Habeas Corpus (ECF No. 1) pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court bench trial conviction for felonious assault in violation of the Ohio Revised Code (“O.R.C.”) § 2903.11; aggravated burglary in violation of O.R.C. § 2911.11; and possession of criminal tools in violation of O.R.C. § 2923.24. Johnson argues that his conviction violated the Fifth, Sixth, and Fourteenth Amendment guarantees of trial, confrontation of witnesses, and due process because the trial court based its verdicts on information that was not admitted into evidence. (*See* Petition, ECF No. 1.)

This court referred the case to Magistrate Judge Nancy Vecchiarelli for preparation of a Report and Recommendation. On June 30, 2006, Respondent Reginald Wilkinson (hereinafter, “Respondent”) filed his Return of Writ. (ECF No. 7.) Johnson did not file a traverse. The

Magistrate Judge then submitted her Report and Recommendation on April 25, 2007, recommending that Johnson's Petition for Habeas Corpus under 28 U.S.C. § 2254 be denied. (ECF No.8.) The Magistrate Judge found that the trial court judge's observation regarding the outcome of the Lewis/Tyson boxing match was not an error of state law that resulted in a trial bereft of fundamental fairness because it was judicial notice of a fact that cannot reasonably be disputed and is readily verifiable. (R&R 9.)

On May 30, 2007, Petitioner filed Objections to the Report and Recommendation, erroneously titled "Motion for Extension of Time to File Objections to Report and Recommendation of Magistrate Judge." (*See* ECF No. 13.)

The court finds, after careful review of the Magistrate Judge's Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 8.) Johnson's Petition for Writ of Habeas Corpus is hereby denied. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

July 24, 2007